

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2625 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARBHAI V SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR SS PATEL AGP for Respondent No. 1

MR BRAHMBHATT for MR BHARAT T RAO for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/07/1999

ORAL JUDGEMENT

Heard the learned advocates appearing for the respective parties.

The petitioner herein challenges the order of preventive detention dated 12th March, 1999, made by the District Magistrate, Ahmedabad, under the powers

conferred upon him under sub-section (2) of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act').

The grounds of detention suggest that the petitioner is the Manager in Ceramic Manufactory, named and styled as "ShriRam Ceramic Factory", situated at Ahmedabad. It is alleged that upon inspection by the officers of the Civil Supplies Department, large number of controlled Kerosene was found in stock to be used as a fuel by the said manufactory. After inspecting the accounts and stock register, etc. it was inferred that the said manufactory had purchased controlled Kerosene for undue gain which also resulted into the disruption of supply of Kerosene, more particularly of controlled Kerosene, which is being supplied to the card holders at subsidised rates.

Amongst several other grounds, Mr. Pahwa has submitted that the petitioner had made a representation against the order of detention through his advocate on 3rd April, 1999. By the said date, the order of detention made by the District Magistrate, was already approved by the State Government. All that was required of the District Magistrate, therefore, was to forward the said representation to the State Government, which he did on 12th April, 1999. Thus, there is an undue and unexplained delay in forwarding the representation to the State Government. The proposition is contested by the learned AGP Mr. Patel. He has relied upon the affidavit made by the Detaining Authority, and has submitted that the representation was received in the office of the District Magistrate on 6th April, 1999, and was immediately sent to the District Supply Officer, and from there, it was sent to the Enforcement Branch, and to the Food & Civil Supplies Controller, who had prepared the para-wise remarks on the said representation, and was sent to the District Magistrate on 12th April, 1999 (10th and 11th being public holidays). The District Magistrate immediately forwarded the representation along with the para-wise remarks to the State Government on the same day. Considering the above dates, it does appear that excluding the public holidays, the office of the District Magistrate took five days to prepare para-wise remarks and to send it to the State Government. If the office of the District Magistrate is entrusted with the duty of preparation of the para-wise remarks, it should do the same expeditiously. However, what is disturbing is sending of papers from one office to the other and thus

whiling away time. If at all the papers were required to be moved from one office to the other, it is not explained in the affidavit what was the contribution by each of the officers and whether it was essential. Apparently, it appears that though the para-wise remarks had to be prepared by the proposing authority i.e. the Food and Civil Supply Controller, Ahmedabad, the papers were not sent directly to him, but it was submitted through the District Supply Officer and the Enforcement Branch. It is tried to be explained that that is the way the papers have to be moved, but it is not born out in the affidavit. It is not explained whether the District Supply Officer or the Enforcement Branch makes its own contribution towards the para-wise remarks. In absence of such material before me, I am constrained to hold that the papers were unnecessarily moved from table to table whiling away three days in considering the representation made against the order of detention. In view of the prevailing judicial pronouncements of the Hon'ble Supreme Court and of this court, such unnecessary delay, even of a few days, should vitiate the continued detention of the detenu. The petition is, therefore, required to be allowed on this ground alone. I, therefore, do not deal with the other contentions raised by Mr. Pahwa and answered by Mr. Patel.

For the reasons recorded hereinabove, petition is allowed. The impugned order dated 12th March, 1999 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI